

Meeting Date:

01/27/09

AGENDA REPORT

City of Santa Clara, California

Agenda Item #

5A -10



Date: January 20, 2009

To: City Manager for Council Action

From: Director of Finance

Subject: Utility Billing Identity Theft Prevention Program

EXECUTIVE SUMMARY:

In accordance with the Fair and Accurate Credit Transaction Act of 2003 (FACT), the City of Santa Clara Finance Department, Municipal Services Division must determine whether its covered accounts are subject to risk of identity theft, and, if necessary, implement a consumer credit protection program designed to detect, prevent, and mitigate identity theft in customer accounts. The program should incorporate existing policies and procedures where applicable, and provide for continued administration of consumer credit protections. The City of Santa Clara may tailor its program to a level commensurate with the nature and complexity of its size and activities. Such a program must be approved by May 1, 2009 by the City Council, or an appropriate subcommittee of the Council. The Council or the subcommittee must be involved in the oversight, development, implementation, and administration of any program. Additionally, Staff must create, at least annually, a report on its compliance.

FACT Act and the Federal Trade Commission

The Fair Credit Reporting Act (FCRA) regulates consumer credit information. The FACT Act amended FCRA by allowing consumers to request one free credit report per year, allowing consumers to monitor their credit histories, and requiring specific protection of consumer information. The FACT Act provisions regarding protection of consumer credit information apply to public utilities, such as the City of Santa Clara, and its customer accounts that are designed to permit multiple payments or transactions.

In order to create a uniform system to protect consumer credit information in compliance with the FACT Act, the Federal Trade Commission (FTC) has issued rules and regulations for applicable financial institutions and creditors known as the "Red Flags Rules." "Red Flags" are warning signs, including patterns, practices or specific activities that are indicative of identity theft. The City's proposed program includes a description of relevant FACT Act "red flags," "red flag" detection activities, "red flag" responses, and a section addressing program updates and administration and is entitled City of Santa Clara Finance Department Utility Billing Identity Theft Prevention Program (Attachment A). Attachment A is designed as a section to be incorporated in a Customer Service Training Manual and published via the City of Santa Clara Intranet (CSI) for internal reference. A copy of Attachment A will be available in the Council Offices prior to the meeting.

ADVANTAGES AND DISADVANTAGES OF ISSUE:


The advantage to implementing the program is the City will be in compliance with these new regulations and will avoid potential Federal and State agency enforcement efforts which can include fines, enforcement actions and lawsuits. There are no disadvantages.

ECONOMIC/FISCAL IMPACT:

No funds are required to be expended to adopt this Resolution to implement the Municipal Services Utility Billing Identity Theft Prevention Program.

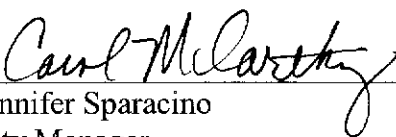
RECOMMENDATION:

That the City Council adopt the Resolution to implement the Utility Billing Identity Theft Program to existing policies and procedures to comply with regulations issued by the Federal Trade Commission (FTC) in the Fair and Accurate Credit Transactions (FACT) Act of 2003.



Mary Ann Parrot
Director of Finance

APPROVED:



for Jennifer Sparacino
City Manager

Documents Related to this Report:

- 1) Resolution Implementing the Utility Billing Identity Theft Prevention Program***
- 2) Attachment A – City of Santa Clara, Finance Department, Utility Billing Identity Theft Program***

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADOPTING UTILITY BILLING IDENTITY
THEFT PREVENTION PROGRAM**

BE IT RESOLVED BY THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, the Federal Trade Commission ("FTC") has adopted regulations that require "creditors" holding customer or other "covered accounts" (which are defined to mean any account where customer payment information is collected in order to bill for services rendered) to develop and implement by May 1, 2009 an identity theft prevention program that complies with those regulations; and

WHEREAS, because the City of Santa Clara Finance Department, Municipal Utilities Division provides retail electric, water, sewer and refuse services to its customers, it is a "creditor" under the applicable FTC regulations and must therefore comply with those regulations by adopting and implementing an identity theft prevention program; and,

WHEREAS, the City Council desires to take action to comply with the applicable FTC regulations by adopting an identity theft prevention program.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

That the City Council hereby adopts, and directs the Municipal Utility Division Staff to implement, the following identity theft prevention program.

1. Program Goals. The Utility Billing Identity Theft Prevention Program (the "Program") shall endeavor to achieve the following goals:

A. To identify relevant patterns, practices and specific activities (referred to in this Program as "Red Flags") that signal possible identity theft relating to information maintained in

the Municipal Utility customers' accounts, both those currently existing and those accounts to be established in the future;

B. To detect Red Flags after the Program has been implemented;

C. To respond promptly and appropriately to detected Red Flags to prevent or mitigate identity theft relating to Utility customer account information; and

D. To ensure the Program is updated periodically to reflect any necessary changes.

2. The Program.

A. The Utility Billing Department shall assess the security of its customer account system, with an emphasis on assessing the methods by which it opens and maintains customer accounts and customers' personal information, and on assessing the manner in which it provides access to customer accounts. That assessment shall include an analysis of any prior incidents of identity theft which the Utility Billing Department has experienced.

B. The Utility Billing Department shall maintain identifying information (address, Social Security Number, etc.) for each customer so it can authenticate customers, monitor transactions, and verify the validity of customer requests, such as a change of address or service-related requests, including requests to terminate service.

C. The Utility Billing Department shall establish a reporting system which allows staff to discover potential Red Flags as they arise and to thereafter report them to the proper authorities, including law enforcement. This reporting system should specifically focus on the following Red Flags: Alerts, notifications, or other warnings received from consumer reporting agencies or service providers; presentation of suspicious documents by a purported customer; presentation of suspicious personal identifying information by a purported customer, such as a specific address change; the unusual use of, or other suspicious activity related to, a customer's

account; and notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with the Utility's customer accounts.

D. The Municipal Utility shall adopt procedures which provide for appropriate responses to any detected Red Flags which are commensurate with degree of risk posed. In determining an appropriate response, the Utility shall consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records, or notice that a customer has provided information related to a customer's account to someone fraudulently claiming to represent the Utility. Appropriate responses include the following: i) monitoring customer accounts for evidence of identity theft, ii) contacting the customer, iii) changing from time to time any passwords, security codes, or other security devices that permit access to customer accounts, iv) reopening a customer account with a new account number, v) not opening a new customer account, vi) closing an existing customer account, vii) notifying law enforcement, and viii) determining that no response is warranted under the particular circumstances. Any Red Flags should be brought to the Finance Director's attention to determine the appropriate response(s) to be implemented promptly after detection.

E. The Director of Finance, or his or her designee, shall implement and administer the Program. The Director of Finance shall provide periodic reports to the City Council on the effectiveness of the Program and shall ensure that all necessary Municipal Utility Billing employees are properly trained to implement the Program.

F. The Director of Finance shall annually review the Program with appropriate Municipal Utility Division Staff to determine if any revisions are needed. That review may

include changes in identity theft methods and changes in methods to detect, prevent, and mitigate identity theft.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ____ DAY OF _____, 200__, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:

1. None

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City of Santa Clara
Finance Department

Utility Billing
Identity Theft Prevention Program

Utility Billing Identity Theft Prevention Program

Purpose

This document was created in order to comply with regulations issued by the Federal Trade Commission (FTC) as part of the implementation of the Fair and Accurate Credit Transaction (FACT) Act of 2003. The FACT Act requires that financial institutions and creditors implement written programs which provide for detection of and response to specific activities ("Red Flags") that could be related to identity theft.

The FTC regulations require that the program must:

1. Identify relevant Red Flags and incorporate them into the program
2. Identify ways to detect Red Flags
3. Include appropriate responses to Red Flags
4. Address new and changing risks through periodic program updates
5. Include a process for administration and oversight of the program

This program is in response to and in compliance with the
Fair and Accurate Credit Transaction (FACT) Act of 2003
and

The final rules and guidelines for the FACT Act issued by the Federal Trade Commission and
federal bank regulatory agencies in November 2007

Program Details

Red Flags Rule Definitions

The Red Flags Rule defines "Identity Theft" as "fraud committed using the identifying information of another person" and a "Red Flag" as a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.

According to the Rule, a municipal utility is a creditor subject to the Rule requirements. All the Utility's accounts that are individual utility service accounts held by customers of the utility whether residential, commercial or industrial are covered by the Rule. Under the Rule, a "covered account" is:

1. Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

"Identifying information" is defined under the Rule as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including: name, address, telephone number, social security number, date of birth, government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer's Internet Protocol address, or routing code.

Relevant Red Flags

Red Flags are warning signs or activities that alert a creditor to potential identity theft. The guidelines published by the FTC include 26 examples of Red Flags which fall into the five categories below:

- Alerts, notifications, or other warnings received from consumer reporting agencies or service providers
- Presentation of suspicious documents
- Presentation of suspicious personal identifying information
- Unusual use of, or other suspicious activity related to, a covered account
- Notice from customers, victims of identity theft, or law enforcement authorities

After reviewing the FTC guidelines and examples, the Finance Department determined that the following Red Flags are applicable to utility accounts. These Red Flags, and the appropriate responses, are the focus of this program.

- A consumer credit reporting agency reports the following in response to a credit check request:
 - Fraud or active duty alert

- Credit freeze
- The Social Security Number (SSN) is invalid or belongs to a deceased person
- The age or gender on the credit report is clearly inconsistent with information provided by the customer
- Suspicious Documents and Activities
 - Documents provided for identification appear to have been altered or forged.
 - The photograph on the identification is not consistent with the physical appearance of the customer.
 - Other information on the identification is not consistent with information provided by the customer.
 - The SSN provided by the customer belongs to another customer in the Customer Information System (CIS).
 - The customer does not provide required identification documents when attempting to establish a utility account or make a payment.
 - A customer refuses to provide proof of identity when discussing an established utility account.
 - A person other than the account holder or co-applicant requests information or asks to make changes to an established utility account.
 - An employee requests access to the CIS system or information about a utility account, and the request is inconsistent with the duties of their job classification.
- A customer notifies the Finance Department of any of the following activities:
 - Utility statements are not being received
 - Unauthorized changes to a utility account
 - Unauthorized charges on a utility account
 - Fraudulent activity on the customer's bank account or credit card that is used to pay utility charges
- The Finance Department is notified by a customer, a victim of identity theft, or a member of law enforcement that a utilities account has been opened for a person engaged in identity theft.

Detecting and Responding to Red Flags

Red Flags will be detected as Finance Department employees interact with customers and the City's credit reporting agency. An employee will be alerted to these Red Flags during the following processes:

- **Establishing a new utility account:** When establishing a new account, a customer is asked to provide a SSN so that the Customer Service Representative (CSR) can run a credit check. Reports from the credit reporting agency may contain Red Flags.

Response: Do not establish the utility account. Ask the customer to appear in person and provide government-issued photo identification. A deposit may also be required in order to establish service.

- **Reviewing customer identification in order to establish an account, process a payment, or enroll the customer in an automatic payment plan:** The CSRs may be presented with documents that appear altered or inconsistent with the information provided by the customer.

Response: Do not establish the utility account or accept payment until the customer's identity has been confirmed.

- **Answering customer inquiries on the phone, via email, and at the counter:** Someone other than the account holder or co-applicant may ask for information about a utility account (including automatic or electronic payment facilities) or may ask to make changes to the information on an account. A customer may also refuse to verify their identity when asking about an account.

Response: Inform the customer that the account holder or the co-applicant must give permission for them to receive information about the utility account. Do not make changes to, or provide any information about, the account, with one exception: if the service on the account has been interrupted for non-payment, the CSR may provide the payment amount needed for reconnection of service.

- **Processing requests from City of Santa Clara employees:** Employees may submit requests for information in the CIS systems that are inconsistent with the duties of their job classification.

Response: All requests for direct access to the CIS system are approved by the Municipal Services Division Manager, so the Information Technology Department should reject requests that have not received appropriate approval. All other requests for information from the CIS system should be reviewed to ensure that they do not violate any part of the Privacy Policy. Requests that are inconsistent with the policy will be denied.

- **Receiving notification that there is unauthorized activity associated with a utility account:** Customers may call to alert the City about fraudulent activity related to their utility account and/or the bank account or credit card used to make payments on the account.

Response: Verify the customer's identity, and notify the Utility Billing Supervisor in the Municipal Services Division immediately. Take the appropriate actions to correct the errors on the account, which may include:

- Issuing a service order to connect or disconnect services
- Assisting the customer with deactivation of their payment method
- Updating personal information on the utility account
- Updating the mailing address on the utility account
- Updating account notes to document the fraudulent activity
- Adding a password to the account

- Notifying and working with law enforcement officials
- **Receiving notification that a utilities account has been established for a person engaged in identity theft.**

Response: These issues should be escalated to the Utility Billing Supervisor in the Municipal Services Division immediately. The claim will be investigated, and appropriate action will be taken with law enforcement or other appropriate City entities, in order to resolve the issue as quickly as possible.

Additional procedures that help to protect against identity theft include:

- CIS system access is based on the role of the user. Only certain job roles and classifications have access to the entire system.
- Customers may access limited information about their utility account online and via the automated phone system. In order to access information online, customers must enroll using their utility account number and service address, and they must create a unique user identification and password.
- The Finance Department will investigate ways to reduce the number of paper records generated during credit card payment processing.
- The Finance Department will investigate ways to restrict the instance and formatting of personal information in payment collection and CIS systems in order to limit or eliminate the visibility of such information.
- The Finance Department will ensure that service providers that receive and process utility billing information have programs in place to detect and prevent identity theft.

Administration and Oversight of the Program

Finance Department staff is required to prepare an annual report which addresses the effectiveness of the program, documents significant incidents involving identity theft and related responses, provides updates related to external service providers, and includes recommendations for material changes to the program.

The program will be reviewed at least annually and updated as needed based on the following events:

- Experience with identity theft
- Changes to the types of accounts and/or programs offered
- Implementation of new systems and/or new vendor contracts

Specific roles are as follows:

The Municipal Services Division Manager will submit an annual report to the Finance Director.

The Municipal Services Division Manager will also oversee the daily activities related to identity theft detection and prevention, and ensure that all members of the Municipal Services Division staff are trained to detect and respond to Red Flags.

The Finance Director will provide ongoing oversight to ensure that the program is effective.

The Finance Director, Electric Director, Water Director, Street Director and Information Technology Director will review the annual report and approve recommended changes to the program, both annually and on an as-needed basis.

The City Council must approve the initial program.

CITY OF SANTA CLARA
AGENDA MATERIAL ROUTE SHEET

SUBJECT: Utility Billing Identity Theft Prevention Program Council Date: _____

CERTIFICATION

The proposed resolution to adopt a program
Regarding Utility Billing Identity Theft Prevention Program
has been reviewed and is hereby certified.

PUBLICATION REQUIRED:

The attached Notice/Resolution/Ordinance is to be published _____ time(s) at least _____ days before the scheduled meeting/public hearing/bid opening/etc., which is scheduled for _____, 200__.

AUTHORITY SOURCE FOR PUBLICATION REQUIREMENT:

Federal Codes:

Title _____ U.S.C. § _____
(Titles run 1 through 50)

California Codes:

Code _____ § _____
(i.e., Government, Street and Highway, Public Resources)

Federal Regulations:

Title _____ C.F.R. § _____
(Titles run 1 through 50)

California Regulations:

Title _____ California Code of Regulations § _____
(Titles run 1 through 28)

City

City Charter § _____ (i.e., 1310. Public Works Contracts. Notice published at least once at least ten days before bid opening)
City Code § _____

1. As to City Functions, by

Michelle R. Eglesia
Department Head

2. As to Legality, by

Julia H
City Attorney's Office 08.1437

3. As to Environmental
Impact Requirements, by

N/A
Director of Planning and Inspection

4. As to Substance, by

Carol McCartney
City Manager

Revision Date June 7, 2005